

1 Gerald E. Hawxhurst (Bar No. 220327)
2 jerry@cronehawxhurst.com
3 Joshua P. Gelbart (Bar No. 274021)
4 jgelbart@cronehawxhurst.com
5 CRONE HAWXHURST LLP
6 10880 Wilshire Blvd., Suite 1150
7 Los Angeles, California 90024
8 Telephone: (310) 893-5150
9 Facsimile: (310) 893-5195
10
11 Jacob S. Pultman (*Pro Hac Vice Forthcoming*)
12 jacob.pultman@newyork.allenover.com
13 Molly C. Spieczny (*Pro Hac Vice Forthcoming*)
14 molly.spieczny@newyork.allenover.com
15 ALLEN & OVERY LLP
16 1221 Avenue of the Americas
17 New York, NY 10020
18 Telephone: (212) 610-6300
19 Facsimile: (212) 610-6399
20
21 Attorneys for Plaintiff
22 Alpha Investment, LLC.

CRONE HAWXHURST LLP
10880 WILSHIRE BOULEVARD, SUITE 1150
LOS ANGELES, CALIFORNIA 90024
Tel: (310) 893-5150 • Fax: (310) 893-5195

FILED

87-
CLERK U.S. DISTRICT COURT
LOS ANGELES CALIFORNIA
11 JUN - 3 PM 2011
27

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 WESTERN DIVISION

CV11-04764 DMG (cws)

17
18 ALPHA INVESTMENT, LLC,

CASE NO.

19 Plaintiff,

COMPLAINT FOR:

20 v.
21 ZYNGA INC. and ANDREW TRADER,
22 Defendants.

- 23 (1) **MANDATORY**
24 **INJUNCTION;**
- 25 (2) **DECLARATORY**
26 **JUDGMENT;**
- 27 (3) **INTENTIONAL**
28 **INTERFERENCE WITH**
PROSPECTIVE
ECONOMIC ADVANTAGE;
- (4) **BREACH OF CONTRACT;**
- (5) **TORTIOUS**
INTERFERENCE WITH
CONTRACT;
- (6) **UNFAIR COMPETITION**

29
30 **JURY TRIAL DEMANDED**

COPY

1 Plaintiff Alpha Investment, LLC (“Alpha”), by and through its attorneys, for
2 its complaint against defendants Zynga Inc. (“Zynga”) and Andrew Trader
3 (“Trader”), alleges the following upon knowledge as to its own actions and upon
4 information and belief for the remainder of the complaint:

5 **NATURE OF THE ACTION**

6 1. In August 2010, Alpha entered into a Stock Purchase Agreement (the
7 “SPA”) with Trader to acquire one million shares of Class A Common stock of
8 Zynga (the “Shares”).

9 2. This action now arises from Zynga’s deliberate and wrongful efforts
10 to impose improper and unlawful restrictions on the Shares that Alpha is entitled to
11 purchase pursuant to the SPA between Alpha and Trader. Zynga’s wrongful and
12 unreasonable conduct is interfering with Alpha’s rights and its opportunity to hold
13 the Shares and to hold those shares free from unwarranted transfer restrictions.

14 3. Since the signing of the SPA and the related Escrow Agreement
15 between Alpha and Trader in August 2010, \$12.87 million of Alpha’s capital has
16 been held in an escrow account, and Alpha has been deprived of the benefit of its
17 contract with Trader because Zynga has improperly refused to allow the stock sale
18 to go forward. This has been based on Zynga’s stated refusal to recognize the
19 transfer and to register the Shares in the name of Alpha without any valid
20 justification.

21 4. Zynga’s intentional interference has prevented Alpha from realizing
22 the benefit of its contract and its contractual relations, benefits that Alpha should
23 properly receive given its negotiation of and its entry into the SPA with Trader, *i.e.*,
24 the opportunity to own the Shares. Accordingly, Alpha seeks a mandatory
25 injunction requiring Zynga to (i) accept the legal opinion that was, upon
26 information and belief, provided to Zynga by Trader and Trader’s counsel, (ii)
27 register the Shares in Alpha’s name, and (iii) issue Alpha a certificate for the
28

1 Shares. In addition, Alpha seeks damages against Zynga for its improper
2 interference with Alpha's contract with Trader.

3 5. Upon information and belief, Trader performed his obligations under
4 the SPA. However, and in the alternative, in the event that Trader failed to perform
5 all of his contractual requirements under the SPA and thereby prevented Alpha
6 from obtaining the Shares, Alpha seeks specific performance of all of Trader's
7 obligations under the SPA, in addition to the relief sought from Zynga.

PARTIES

9 6. Alpha Investment, LLC is a limited liability corporation organized
10 under the laws of Abu Dhabi with an address at P.O. Box 186, Abu Dhabi, United
11 Arab Emirates. Alpha is therefore a citizen of Abu Dhabi.

12 7. Defendant Zynga Inc. is a private Delaware corporation and has its
13 principal place of business at 365 Vermont Street, Suite A, San Francisco,
14 California 94103.

15 8. Upon information and belief, defendant Andrew Trader is a resident
16 and citizen of California.

JURISDICTION, VENUE AND APPLICABLE LAW

18 9. This Court has subject matter jurisdiction over this action pursuant to,
19 *inter alia*, 28 U.S.C. § 1332 because the parties are diverse and the amount in
20 controversy exceeds \$75,000, exclusive of interest and costs of suit.

21 10. This Court has personal jurisdiction over Zynga because Zynga has its
22 principal place of business in California.

23 11. This Court has personal jurisdiction over Trader because Trader is a
24 citizen of California and because Trader has contractually consented to personal
25 jurisdiction in this Court.

26 12. Venue lies in this district pursuant to 28 U.S.C. § 1331(a) and (c)
27 because: (i) a substantial part of the events or omissions giving rise to this action
28 occurred within this district; specifically, counsel for Plaintiff was retained in this

1 district and negotiated and, upon information and belief, delivered the legal opinion
2 in question from this district; (ii) Trader has contractually consented to venue in
3 this district; and (iii) Zynga is subject to personal jurisdiction in this state, and
4 Zynga has sufficient contacts within this district to be subject to personal
5 jurisdiction in this district if this district were a separate state.

6 13. The SPA states that it is governed by and shall be construed in
7 accordance with California law, without giving effect to that body of laws
8 pertaining to conflict of laws.

FACTUAL ALLEGATIONS

A. Zynga

14. Zynga is a social network gaming company. It develops browser-based games as applications on social networking websites such as Facebook and MySpace, as well as stand-alone browser-based games. Some of its most popular games include CityVille, FarmVille, and Mafia Wars. According to its website, Zynga has more than 215 million active monthly users and 50 million active daily users.

15. Zynga was formed as a limited liability company under the name Presidio Media LLC in California on or about April 19, 2007. It was converted to a Delaware corporation named Presidio Media Inc. on or about October 25, 2007. Thereafter, the corporation was renamed Zynga Game Network Inc. on or about February 11, 2008, and was later renamed Zynga Inc. on or about November 17, 2010.

16. According to the Fourteenth Amended and Restated Certificate of Incorporation of Zynga Inc., filed on or about April 18, 2011, Zynga is a private corporation with shares of authorized common stock numbering 1,019,092,724 and shares of authorized preferred stock numbering 399,822,180. Of Zynga's shares of authorized common stock, 998,575,252 shares are designated "Class A Common Stock."

1 17. Through its entry into the SPA, Alpha sought to invest in Zynga.

2 **B. Andrew Trader**

3 18. Trader is a co-founder of Zynga and former employee of Zynga who
4 owns shares of Class A Common Stock in Zynga pursuant to a Stock Option
5 Agreement and Stock Option Exercise Agreement, both dated on or about January
6 3, 2008 (the “Binding Shareholder Agreements”), between Zynga and Trader.

7 19. The Binding Shareholder Agreements provided that Zynga had a right
8 of first refusal (the “Right of First Refusal”) for any proposed sale of Trader’s
9 shares for a period of 30 days from the time Zynga was given notice of the terms of
10 the sale.

11 **C. SecondMarket**

12 20. Nonparty SecondMarket, Inc. (“SecondMarket”) is an online
13 marketplace for, *inter alia*, stock in a variety of high growth private companies. It
14 provides a private environment for early investors and employee shareholders to
15 sell their shares prior to a company’s initial public offering or other liquidity event.
16 According to SecondMarket’s Private Company Report for the third quarter of
17 2010, SecondMarket has facilitated transactions in private company stock of
18 companies including Zynga, Facebook, and Twitter, among others.

19 21. Through the private marketplace forum provided by SecondMarket,
20 Alpha and Trader were introduced in the summer of 2010 and began exploring the
21 potential purchase and sale of Trader’s shares in Zynga, the relevant terms of
22 which were negotiated and set forth in the SPA.

23 **D. The Stock Purchase Agreement**

24 22. On or about August 26, 2010, Alpha and Trader entered a Stock
25 Purchase Agreement (the aforementioned “SPA”), whereby Alpha agreed to
26 purchase from Trader 1,000,000 shares of Zynga Class A Common Stock (as
27 defined above, the “Shares”) for \$12.87 per share and an aggregate price of
28 \$12,870,000.

1 23. In accordance with the Binding Shareholder Agreements, the SPA
2 provided that the sale from Trader to Alpha was subject to Zynga's Right of First
3 Refusal and that, pursuant to that Right of First Refusal, Trader would provide
4 Zynga with notice of the proposed transfer upon execution of the SPA.

5 24. The SPA also provided that Alpha agreed to be bound by and comply
6 with the limitations on transfer in the Binding Shareholder Agreements (SPA,
7 Section 5.1).

8 **E. Notice is Provided to Zynga**

9 25. On or about August 26, 2010, Trader provided Zynga and counsel for
10 Zynga with a Notice of Proposed Transfer (the "Notice") that set forth the terms of
11 the SPA between Alpha and Trader, and formally provided Zynga with (i) notice of
12 the proposed sale of the Shares and (ii) the opportunity to exercise its Right of First
13 Refusal for purchase of the Shares.

14 26. The Notice provided, in relevant part:

15 I acknowledge that this Notice is an offer to sell the
16 Offered Shares to the Company [Zynga] and/or its
17 assignee(s) pursuant to the Company's Right of First
18 Refusal at the Offered Price.

19 The Company and/or its assignee(s) shall have 30 days
20 from the date of this Notice to provide written notice to
21 me if they elect to exercise their respective Right of First
22 Refusal.

23 27. David Kinitsky ("Kinitsky"), an employee of SecondMarket, sent an
24 email to Zynga and its outside counsel with the SPA and the Notice on or about
25 August 26, 2010.

26 **F. Zynga Recognized the Contract between Alpha and Trader**

27 28. In response to Kinitsky's email, Karyn Smith, Deputy General
28 Counsel for Zynga, replied on or about August 26, 2010, as follows: "Duly noted.

1 We will advise you by September 25 regarding our intention to exercise our right
 2 of first refusal on these shares.” More than 30 days passed and Zynga did not
 3 exercise its Right of First Refusal. During this period, Zynga did not contact Alpha
 4 or SecondMarket.

5 29. On or about September 26, 2010, Kinitsky emailed Zynga and its
 6 outside counsel, noting that the Right of First Refusal period had expired. Kinitsky
 7 requested that Zynga confirm that it had waived its Right of First Refusal and send
 8 “any and all final closing materials” so that the transfer of the Shares between
 9 Trader and Alpha could be consummated.

10 30. On or about September 27, 2010, Smith of Zynga replied, stating that
 11 Zynga had decided not to exercise its Right of First Refusal with respect to the
 12 Shares. Smith noted that Zynga’s outside counsel, Brian Erb of Ropes & Gray
 13 LLP, would thereafter communicate with SecondMarket “regarding the
 14 documentation required to complete this transfer” of shares from Trader to Alpha.

15 **G. Zynga Makes a Series of Wholly Unjustified Demands for the**
Imposition of Improper Restrictions on the Sale of Shares

16 31. On or about September 29, 2010, Zynga, through its counsel Erb, sent
 17 an email to SecondMarket, Alpha and Trader, attaching a form of Stock Purchase
 18 Agreement and Representation Letter as well as Stock Transfer Instructions.

19 32. These documents purported to impose additional restrictions on the
 20 sale of shares from Trader to Alpha beyond those in the SPA, the Binding
 21 Shareholder Agreements, Zynga’s Tenth Amended and Restated Certificate of
 22 Incorporation, which was in effect at the time, and, upon information and belief, all
 23 of Zynga’s bylaws then in effect. In particular, the restrictions provided that Alpha
 24 could not sell or transfer the shares beginning on the date of acquisition of the
 25 Shares until the later of (i) 180 days after the initial public offering of Zynga’s
 26 common stock or (ii) the termination date of the market standoff agreement, and
 27 sought to impose an obligation that Alpha would enter into an agreement required

1 by Zynga to implement this.

2 33. The form of Stock Purchase Agreement proposed by Zynga provided,
3 in relevant part:

4 5.2. Representation Letter. Purchaser acknowledges
5 and agrees that it is bound by, and the Shares will
6 be subject to, the provisions of the Representation
7 Letter[.]

8 5.3. Resale Restrictions. Purchaser acknowledges and
9 agrees that it will not effect any sale or transfer of
10 the Shares except in compliance with this
11 Agreement, the Representation Letter and the
12 Binding Stockholder Agreements, and then only if
13 (i) there is then in effect a registration statement
14 under the Act covering such proposed disposition
15 and such disposition is made in accordance with
16 such registration statement; or (ii) Purchaser shall
17 have furnished the Company with an opinion, in
18 form and substance satisfactory to the Company,
19 from counsel to Seller satisfactory to the Company
20 that states that the offer and sale of the Shares
21 being made pursuant to Rule 144 of the Act and in
22 compliance with all applicable federal and state
23 securities laws.

24 5.4. Subsequent Purchasers. Purchaser acknowledges
25 and agrees that, if permitted, it will not effect any
26 sale or transfer of the Shares except in compliance
27 with this Agreement, the Representation Letter and
28 the Binding Stockholder Agreements, and then

1 only to a transferee who agrees in writing for the
2 benefit of the Company to be bound by all
3 applicable provisions of the Binding Stockholder
4 Agreements. Purchase [sic] understands and
5 acknowledges that all future transferees of all or
6 part of the Shares shall receive and hold the Shares
7 subject to all applicable provisions of the Binding
8 Stockholder Agreements.

9 34. The attached form of Representation Letter proposed by Zynga
10 provided, in relevant part:

11 In connection with the proposed sale of the Shares
12 pursuant to the [Stock Purchase] Agreement, the
13 undersigned, Purchaser and Seller, hereby represent and
14 warrant to, and agree with, the Company as follows: ...

15 (v) without limiting the foregoing, Purchaser hereby
16 acknowledges and agrees that the Shares will be
17 subject to resale restrictions which prohibit the
18 transfer or sale of the Shares at any time during the
19 period beginning on the date of acquisition by
20 Purchaser and ending on the later of (a) 180 days
21 after the effective date of the initial public offering
22 of the Company's common stock or (b) the date on
23 which the market stand-off agreement referenced
24 in clause (iv) above terminates; Purchaser
25 acknowledges that the certificate evidencing the
26 Shares will bear a legend to the foregoing effect;
27 Purchaser shall enter into any agreement
28 reasonably required by the Company to implement

the foregoing;

— ■ ■ ■ —

(vii) . . . [I]n no event shall (a) the Company be deemed to have acted in bad faith in connection with any determination made pursuant to the exercise of its discretion under the provisions of the Agreement or the Binding Stockholder Agreements, and (b) the Company have any liability to Purchaser for the failure of the transactions contemplated by the Agreement to be consummated for any reason; . . .

35. The Stock Transfer Instructions proposed by Zynga purported to require that Zynga's form of Stock Purchase Agreement had to be signed before Zynga would allow the transfer of the Shares to proceed. Notwithstanding the fact that this form of stock purchase agreement referenced the Representation Letter and the restrictions contained in the Representation Letter, such restrictions were not contained in the Binding Shareholder Agreements, Zynga's corporate documents or, upon information and belief, Zynga's bylaws. Zynga improperly sought to impose these demands on this transaction and, specifically, the instructions provided: "Please note that this is the only form of Stock Purchase Agreement that will be accepted by Zynga in connection with the sale of your shares." These improper restrictions were consistent with the clear message Zynga later delivered to Trader, that under no circumstances would Zynga permit the transaction with Alpha to be accomplished.

H. Alpha Requests that Zynga Remove the Additional Restrictions

25 36. Upon reviewing the proposed restrictions in the form of Stock
26 Purchase Agreement and Representation Letter provided by Zynga, counsel for
27 Alpha advised SecondMarket and counsel for Zynga that Alpha would not agree to
28 be bound by restrictions that it was not required to be subject to under the terms of

1 the existing agreements between Zynga and Trader, namely the Binding
2 Shareholder Agreements, or other restrictions that were not otherwise legally
3 required and that were outside the market norms.

4 37. Specifically, Alpha indicated its objection to the language in the
5 section (v) of the Representation Letter that:

6 the Shares will be subject to the resale restrictions which
7 prohibit the transfer or sale of the Shares at any time
8 during the period beginning on the date of acquisition by
9 Purchaser and ending on the later of (a) 180 days after
10 the effective date of the initial public offering of the
11 Company's common stock or (b) the date on which the
12 market stand-off agreement referenced in clause (iv)
13 above terminates; Purchaser acknowledges that the
14 certificate evidencing the Shares will bear a legend to the
15 foregoing effect; Purchaser shall enter into any
16 agreement reasonably required by the Company to
17 implement the foregoing[.]

18 38. On or about November 9, 2010, Kinitsky sent Zynga's counsel an
19 email expressing Alpha's views and requesting that section (v) of the
20 Representation Letter be removed. The email stated that section (v) of the
21 Representation Letter "was a novel restriction on the shares not present in AT's
22 [Trader's] hands" and that "[i]mposing such a restriction, if enforceable, within a
23 Representation Letter allows the company to apply it selectively." Kinitsky further
24 stated that Alpha "finds the provision unacceptable."

25 39. Kinitsky attached a version of the Representation Letter that omitted
26 the offending section (v) and proposed execution of the version without the section
27 that contained these improper restrictions.

28 40. On or about November 12, 2010, Kinitsky sent a follow-up email to

1 counsel for Zynga, asking if counsel had discussed the provision with Zynga.

2 **I. Zynga Refuses Alpha's Proposed Representation Letter**

3 41. On or about November 17, 2010, Erb, as counsel for Zynga,
 4 responded that: "to the extent the transfer restrictions are contained in Zynga's
 5 constitutional documents, it's irrelevant whether or not that provision is in the
 6 representation letter in the form of an agreement on the buyer's part." Erb
 7 continued: "Notwithstanding your or buyer's counsel view, Zynga is perfectly
 8 comfortable that this provision is enforceable."

9 42. Neither Zynga nor Erb provided any basis for the restriction under
 10 California or Delaware law or in Zynga's Certificate of Incorporation. Nor did
 11 Zynga provide any bylaw restrictions to this effect.

12 43. Kinitsky responded, again on November 17, 2010, asking Erb which
 13 of Zynga's constitutional documents set forth the transfer restriction at issue. Erb
 14 replied that same day, stating that the restriction was contained in Zynga's bylaws.
 15 Neither Erb nor Zynga has provided Alpha with Zynga's bylaws. Upon
 16 information and belief, Zynga's bylaws contained no such restriction.

17 **J. Trader's Compliance with the SPA**

18 44. Section 2.3 of the SPA required Trader to provide Zynga with "a legal
 19 opinion with regard to the transfer of the Shares in standard form for such
 20 transactions." Accordingly, Trader retained the Los Angeles law firm of Vick Law
 21 Group to provide the required form legal opinion, and upon information and belief,
 22 the firm provided this opinion as called for in the SPA.

23 45. Upon information and belief, Trader has complied with his obligations
 24 to Zynga under Section 2.3 of the SPA in that he has provided Zynga with "a legal
 25 opinion with regard to the transfer of the Shares in standard form for such
 26 transactions." Upon information and belief, attorney Scott Vick, acting as counsel
 27 for Trader, provided Zynga with such a legal opinion in November or December
 28 2010. Alpha has repeatedly requested a copy of the opinion Trader provided to

1 Zynga from both Zynga and Trader but neither Zynga nor Trader has produced it to
2 Alpha.

3 46. Notwithstanding Trader's apparent satisfaction of this requirement, on
4 or about December 22, 2010, Kinitsky emailed counsel for Alpha, explaining that
5 "the message we [SecondMarket and Trader] are receiving from Zynga is that they
6 are simply not going to let any transfer take place here."

7 47. As a result of Zynga's refusal to permit the share transfer to Alpha
8 from Trader, Alpha has been denied the benefit of its contract with Trader,
9 specifically the opportunity to own the Shares. This refusal is of particular
10 consequence because, as has been widely reported, Zynga's valuation has increased
11 tremendously since Alpha and Trader signed the SPA, and the value of the shares
12 purchased by Alpha under the SPA has significantly increased in value during the
13 intervening period.

14 **K. The Delaware Action**

15 48. Zynga is a Delaware corporation and its internal corporate matters are
16 governed by Delaware law. Therefore, Alpha brought an action against Zynga in
17 the Delaware Court of Chancery, captioned *Alpha Investment, LLC v. Zynga Inc.*,
18 C.A. No. 6225-VCS, challenging Zynga's effort to preclude Alpha and Trader
19 from concluding the sale of the Shares.

20 49. On February 28, 2011, Alpha filed its Verified Complaint in the
21 Delaware Court of Chancery and on March 1, 2011, served its Verified Complaint
22 on Zynga, bringing claims for mandatory injunctive relief requiring Zynga to
23 register the Shares in Alpha's name, as well as claims for declaratory relief and for
24 tortious interference with Alpha's prospective business advantage.

25 50. On March 4, 2011, Alpha served on Zynga its First Request for
26 Production of Documents, seeking, among other things, Zynga's corporate
27 governance documents and bylaws. Zynga produced no discovery, but rather, on
28 March 21, 2011, Zynga moved to dismiss the action and, on April 8, 2011, Zynga

1 moved to stay all discovery.

2 51. In its motion to stay discovery, Zynga argued that staying discovery
3 was somehow appropriate because Alpha had not and could not assert that Trader
4 had taken all steps necessary to effectuate the transfer. Specifically, Zynga claimed
5 that Trader failed to meet his obligation to provide Zynga with a legal opinion.
6 According to Zynga, “Nowhere in the Complaint [. . .] does Alpha allege that Mr.
7 Trader has satisfied this condition. In fact, Mr. Trader has not done so.” *Mot. for*
8 *Stay of Discovery* at 2-3.

9 52. In Zynga’s opening brief in support of its Motion to Dismiss, filed
10 April 20, 2011, Zynga again alleged that Alpha could not state a claim against it
11 because Trader had failed to provide a legal opinion to Zynga as “expressly” and
12 “explicitly” provided for in the SPA. *Br.* at 1, 4. “The Complaint fails to allege
13 that such a legal opinion was provided to the Company. (In fact, it was not.)” *Id.*
14 at 1. Zynga also argued that the complaint should be dismissed under Court of
15 Chancery Rule 19 because Alpha had not joined Trader, an indispensable party to
16 the action. As part of Zynga’s motion under Rule 19, Zynga claimed that full relief
17 on the issues could not be had in Trader’s absence.

18 53. Alpha asked Zynga to produce any legal opinion Trader had provided
19 to Zynga, but Zynga has produced no opinion in response. Notwithstanding the
20 fact that Alpha believes Trader provided the required opinion to Zynga, to avoid
21 any further delay, Alpha brings this complaint case and names all of the parties
22 with potential claims with respect to the Shares.

FIRST CLAIM FOR RELIEF

(Mandatory Injunction Against Zynga)

25 54. Alpha incorporates the allegations in paragraphs 1 through 53 as if
26 fully set forth herein.

27 55. Upon information and belief, the SPA between Alpha and Trader
28 complies with all restrictions in place on the Shares and all requirements in the

1 Binding Stockholder Agreements.

2 56. Zynga chose to allow its 30 day Right of First Refusal to lapse during
3 which time it had the right and opportunity to purchase the Shares and thus prohibit
4 the sale and transfer of the Shares to Alpha. As Zynga chose not to exercise this
5 right and as Alpha meets all other requirements, Zynga must therefore accept the
6 legal opinion that was, upon information and belief, provided to it by Trader,
7 register the Shares in Alpha's corporate name and must issue Alpha a certificate for
8 the Shares in accordance with the SPA and without seeking to impose any
9 additional restrictions on the Shares.

10 57. Zynga has repeatedly and unreasonably refused to register the Shares
11 in Alpha's corporate name and to issue Alpha a certificate for the Shares under the
12 terms of the SPA even after several requests that it do so. Instead, Zynga has
13 purported to impose additional improper and unlawful restrictions on the Shares
14 and (i) has insisted it will only register the Shares in Alpha's corporate name and
15 issue Alpha a certificate for the Shares with these additional restrictions in place,
16 (ii) has averred before the Chancery Court of the State of Delaware that Trader did
17 not satisfy his obligation by providing Zynga with a legal opinion pursuant to
18 Section 2.3 of the SPA when, upon information and belief, Trader provided such an
19 opinion, and (iii) has refused to register the transfer in any event.

20 58. A mandatory injunction requiring Zynga to accept the legal opinion
21 provided by Trader, register the Shares in Alpha's corporate name and to issue
22 Alpha a certificate for the Shares is necessary because Alpha lacks an adequate
23 remedy at law.

24 59. By reason of the foregoing, and notwithstanding any provision to the
25 contrary, Alpha is entitled to a mandatory injunction requiring Zynga to accept the
26 legal opinion provided by Trader, register the Shares in Alpha's corporate name
27 and to issue Alpha a certificate for the Shares in accordance with the SPA and
28 without the imposition of any further restrictions on the Shares.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment Against Zynga)

60. Alpha incorporates the allegations in paragraphs 1 through 59 as if fully set forth herein.

61. Upon information and belief, the SPA between Alpha and Trader complies with the Binding Stockholder Agreements and all restrictions in place on the Shares as of the time the Alpha and Trader signed the SPA.

62. A declaratory judgment is necessary because Alpha lacks an adequate remedy at law.

63. Alpha and Zynga have an actual controversy concerning Zynga's obligation to authorize the transfer of Shares to Alpha from Trader and to register the Shares on behalf of Alpha and to issue Alpha a certificate for the Shares in accordance with the SPA.

64. The parties have a real and adverse interest in the controversy, and it is ripe for judicial determination.

65. By reason of the foregoing and pursuant to 28 U.S.C. §§ 2201 and 2202, Alpha is entitled to a declaration that (i) Trader provided Zynga with a legal opinion that met the requirements of Section 2.3 of the SPA; (ii) Zynga is obliged to authorize the transfer of Shares in accordance with the SPA; (iii) Zynga is precluded from placing additional, unspecified and unreasonable restrictions on the Shares, and (iv) Zynga must register the Shares in Alpha's corporate name and issue Alpha a certificate for the Shares, notwithstanding any provision to the contrary.

THIRD CLAIM FOR RELIEF

(Intentional Interference with Prospective Economic Advantage Against Zynga)

66. Alpha incorporates the allegations in paragraphs 1 through 65 as if fully set forth herein.

1 67. Alpha had a valid prospective business relationship with Trader with
2 a probability of future economic benefit to Alpha, as set forth in the SPA between
3 Alpha and Trader.

4 68. Zynga acknowledged the existence of Alpha's business expectancy
5 and intentionally interfered with the expectancy by refusing to transfer the Shares
6 under the SPA and demanding additional restrictions on the Shares. Zynga's
7 refusal to transfer the Shares without additional restrictions was not done to protect
8 a legitimate business interest and was not justified. Instead, Zynga's actions were
9 done with the intention of interfering with Alpha's business relationship with
10 Trader.

11 69. Zynga's interference has deprived Alpha of its business expectancy.

12 70. Alpha has suffered damages caused by Zynga's interference with
13 Alpha's business relationship with Trader.

FOURTH CLAIM FOR RELIEF

(Breach of Contract, in the Alternative, Against Trader)

16 71. Alpha incorporates the allegations in paragraphs 1 through 53 as if
17 fully set forth herein.

18 72. The SPA is a valid and enforceable written contract.

19 73. Alpha has performed its obligations and complied with all conditions
20 and requirements of the SPA. To the extent that Alpha has not performed all of its
21 obligations and complied with all of the conditions under the SPA, its performance
22 of such has been excused, waived, prevented or made impossible or impracticable
23 by Trader.

24 74. To the extent Trader did not provide Zynga with “a legal opinion with
25 regard to the transfer of the Shares in standard form for such transactions,” Trader
26 failed to meet his obligations under Section 2.3 of the SPA and therefore breached
27 the SPA.

28 75. To the extent Trader breached the SPA, as a direct and proximate

1 cause of Trader's wrongful conduct, Alpha has suffered damages because Alpha
 2 has been deprived of ownership of the Shares, the value of which exceeds the
 3 minimum jurisdictional amount for this action.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Tortious Interference with Contract, in the Alternative, Against Zynga)**

6 76. Alpha incorporates the allegations in paragraphs 1 through 53 and 71
 7 through 75 as if fully set forth herein.

8 77. The SPA between Alpha and Trader is a valid contract, of which
 9 Zynga had knowledge, as the SPA was provided to Zynga with the Notice of
 10 Proposed Transfer on or about August 26, 2010.

11 78. Upon information and belief, Zynga intentionally and unreasonably
 12 refused to accept the legal opinion provided to it by Trader, intentionally inducing
 13 Trader to breach his obligations under Section 2.3 of the SPA.

14 79. Zynga's intentional refusal to accept Trader's legal opinion caused
 15 Trader to breach his contractual obligations under the SPA.

16 80. Alpha has suffered damages as a result of Trader's breach of the SPA,
 17 in that it has been deprived of ownership of the Shares, the value of which exceeds
 18 the minimum jurisdictional amount for this action.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Unfair Competition Against Zynga and Trader)**

21 81. Alpha incorporates the allegations in paragraphs 1 through 80 as if
 22 fully set forth herein.

23 82. Defendants' acts and practices as alleged herein constitute unfair
 24 and/or fraudulent business practices within the meaning of the California Unfair
 25 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*

26 83. Each Defendant is a "person" within the meaning of the UCL.

27 84. As a result of Defendants unfair and/or fraudulent conduct, Plaintiff
 28 has suffered injury in fact and has lost and/or been deprived of money or property.

1 85. Plaintiff is therefore entitled to equitable relief from Defendants,
2 including restitution, disgorgement and a permanent injunction requiring
3 Defendants to cease the unfair and/or fraudulent conduct described herein.

PRAYER FOR RELIEF

5 **WHEREFORE**, Plaintiff Alpha respectfully requests that the Court enter
6 judgment in its favor and against defendants Zynga and Trader as follows:

- a. Awarding Alpha its actual damages on each of its claims;
- b. Granting Alpha all injunctive relief requested herein;
- c. Issuing a mandatory injunction requiring Zynga to accept the legal opinion provided to it by Trader, register the Shares in Alpha's corporate name and issue Alpha a certificate for the shares;
- d. Granting Alpha the declaratory and equitable relief requested herein;
- e. Declaring and determining that Zynga has tortiously interfered with Alpha's prospective business advantage;
- f. As to the Fourth Claim for Relief for Breach of Contract, ordering specific performance under the SPA by Trader;
- g. Awarding Alpha its costs, expenses, disbursements, and attorney's fees in respect hereto; and
- h. Granting Alpha such other relief as the Court deems just and proper.

23 | //

24 //

25 | //

26 | W

27 | //

28 //

1 DATED: June 3, 2011

ALLEN & OVERY LLP

2 CRONE HAWXHURST LLP

3 By: Gerald Hawxhurst /SPG

4 Gerald E. Hawxhurst
5 Attorneys for Plaintiff
6 Alpha Investment, LLC

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CRONE HAWXHURST LLP
10880 WILSHIRE BOULEVARD, SUITE 1150
LOS ANGELES, CALIFORNIA 90024
Tel: (310) 893-5150 • Fax: (310) 893-5195

DEMAND FOR JURY TRIAL

Plaintiff Alpha Investment, LLC hereby demands trial by jury pursuant to Fed. R. Civ. Proc. § 38(b).

DATED: June 3, 2011

ALLEN & OVERY LLP

CRONE HAWXHURST LLP

By Gerald E. Hawxhurst / SPG
Gerald E. Hawxhurst
Attorneys for Plaintiff
Alpha Investment, LLC

CRONE HAWXHURST LLP
10880 WILSHIRE BOULEVARD, SUITE 1150
LOS ANGELES, CALIFORNIA 90024
Tel: (310) 893-5150 • Fax: (310) 893-5119

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dolly Gee and the assigned discovery Magistrate Judge is Carla Woehrle.

The case number on all documents filed with the Court should read as follows:

CV11- 4764 DMG (CWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Gerald E. Hawxhurst
 CRONE HAWXHURST LLP
 10880 Wilshire Blvd., Ste. 1150
 Los Angeles, CA 90024
 310-893-5150

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ALPHA INVESTMENT, LLC,

CASE NUMBER

CV 11-04764 DMG (aw)

PLAINTIFF(S)

v.

ZYNGA INC. and ANDREW TRADER

SUMMONS

DEFENDANT(S) .

TO: DEFENDANT(S): ZYNGA INC. and ANDREW TRADER

A lawsuit has been filed against you.

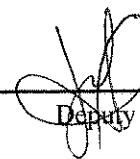
Within 20 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Gerald E. Hawxhurst, whose address is 10880 Wilshire Blvd., Ste. 1150, Los Angeles, CA 90024. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

ORIGINAL

Dated: June 3, 2011

By: _____



Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ALPHA INVESTMENT, LLC		DEFENDANTS ZYNGA INC. and ANDREW TRADER							
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Gerald E. Hawxhurst CRONE HAWXHURST LLP 10880 Wilshire Blvd., Suite 1150, Los Angeles, CA 90024		Attorneys (If Known)							
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)							
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4						
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State PTF DEF <input type="checkbox"/> 5 <input type="checkbox"/> 5						
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation PTF DEF <input type="checkbox"/> 6 <input type="checkbox"/> 6						
IV. ORIGIN (Place an X in one box only.)									
<input checked="" type="checkbox"/> 1 Original Proceeding				<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)				<input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$ > \$75,000					
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Mandatory injunction; declaratory judgment; interference w/ economical advantage; breach of k; tortious interference w/ k; unfair competition.									
VII. NATURE OF SUIT (Place an X in one box only.)									
OTHER STATUTES		CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR			
<input type="checkbox"/> 400 State Reapportionment		<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act			
<input type="checkbox"/> 410 Antitrust		<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations				
<input type="checkbox"/> 430 Banks and Banking		<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act				
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.		<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act				
<input type="checkbox"/> 460 Deportation		<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 750 Other Labor Litigation				
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations		<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 790 Empl. Ret. Inc. Security Act				
<input type="checkbox"/> 480 Consumer Credit		<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 791 Civil Rights				
<input type="checkbox"/> 490 Cable/Sat TV		<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 792 Copyrights				
<input type="checkbox"/> 810 Selective Service		<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 550 Civil Rights					
<input type="checkbox"/> 850 Securities/Commodities/ Exchange		<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 610 Agriculture					
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410		<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 620 Other Food & Drug					
<input type="checkbox"/> 890 Other Statutory Actions		<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881					
<input type="checkbox"/> 891 Agricultural Act		<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 630 Liquor Laws					
<input type="checkbox"/> 892 Economic Stabilization Act		<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 640 R.R. & Truck					
<input type="checkbox"/> 893 Environmental Matters		<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 650 Airline Regs					
<input type="checkbox"/> 894 Energy Allocation Act		<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 660 Occupational Safety/Health					
<input type="checkbox"/> 895 Freedom of Info. Act		<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 690 Other					
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice		<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 861 HIA (1395ff)					
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 862 Black Lung (923)					
			<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 863 DIWC/DIWW (405(g))					
			<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 864 SSID Title XVI					
				<input type="checkbox"/> 865 RSI (405(g))					
				<input type="checkbox"/> 867 FEDERAL TAX SUITS					
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)					
				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609					

COPY

CV11-04764

FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
	Abu Dhabi, A.U.R.

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
	San Francisco County; Delaware

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Donald P. L. SPG Date June 3, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))